

COPY

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

RECEIVED
NOV 19 2001

Illinois Commerce Commission
RAIL SAFETY SECTION

Illinois Commerce Commission,)
On Its Own Motion)

-vs-)

No. T01-0056

Union Pacific Railroad Company; Goodfarm)
Township located in Grundy County; and the)
State of Illinois, Department of Transportation)
Petition to Intervene in Citation to close)
Filman Road (TR 142A, DOT290530M) and)
Gantzert Road (TR 128B, DOT290532B))
located in Goodfarm Twp., Grundy Co., Illinois)

PETITION TO INTERVENE

NOW COME PETER D. SCULLY and RICHARD P. SCULLY, Co-Trustees of the PETER D. SCULLY Trust of 1954, Petitioners, by and through their attorney, Irvin L. Masching, and hereby files a "Petition To Intervene" in the within cause pursuant to Section 200.200 of the Illinois Administrative Code, and in support thereof state as follows:

1. The name, address and telephone number of the Petitioners seeking leave to intervene:

Peter D. Scully and Richard P. Scully, Co-Trustees of the
Peter D. Scully Trust of 1954
c/o Larry M. Evers
First National Bank of Dwight
122 West Main Street
P.O. Box 10
Dwight, Illinois 60420
PH # (815) 584-1400
FAX # (815) 584-1280

Petitioner's Attorney:
Irvin L. Masching
Attorney at Law
105 E. Chippewa Street
P.O. Box 247
Dwight, Illinois 60420
PH # (815) 584-1700
FAX # (815) 584-2900

DOCKETED

2. **A plain and concise statement of the nature of such Petitioners' interest:**

- A. The Petitioners, PETER D. SCULLY, and RICHARD P. SCULLY, as Co-Trustees of the PETER D. SCULLY TRUST of 1954, are the Successors in interest to WILLIAM SCULLY, the original fee title holder to that portion of the Union Pacific Railroad Company right-of-way located in the South One-Half (S ½) of Section 18 and in Section 19 of Garfield Township, and in Sections 24, 25, 26 and 35 in Goodfarm Township, all in Grundy County, Illinois.
- B. The right-of-way currently owned by Union Pacific Railroad Company in the aforementioned Sections of Garfield and Goodfarm Township, Grundy County, Illinois were conveyed by the said WILLIAM SCULLY to the Chicago and Mississippi Railroad Company by Deed of Conveyance executed September 2nd, 1853 and filed for record in Grundy County, Illinois on October 5th, 1853 and found in Book H at Page 455, as Document No. 232.
- C. Attached hereto as *Exhibit A* is a copy of the aforementioned Deed of Conveyance.
- D. Pursuant to the terms and conditions of said Deed of Conveyance executed by William Scully, therein referred to as **Party of the First Part**, the Chicago and Mississippi Railroad Company, the Grantee, and therein referred to as **Party of the Second Part**, its Successors and Assigns, are subject to a covenant running with the land in favor of WILLIAM SCULLY, his Successors and Assigns, said covenant obligating the Chicago and Mississippi Railroad Company, its Successors and Assigns to, among other things;

“ . . . To Have and to Hold the above granted premises to the said party of the second part their successors and assigns to their use and behoof Forever subject to the following covenants of the said party of the second part To Wit the said party of the Second part their Successors and assigns shall in due season Erect and Maintain good and Sufficient fences on Each side of said Strip of land hereby conveyed and also construct and maintain suitable and convenient crossings and cattle guards on Each quarter Section or Smaller Subdivisions if deemed necessary by the said party of the first part and the said party of the first part for himself doeth covenant with the said party of the second part their successors and assigns that he is lawfully Seized in Fee of the aforegranted premises . . . ”

- E. The Union Pacific Railroad Company, as Successor to the Chicago and Mississippi Railroad Company, currently maintains five (5) railroad crossings at grade within the right-of-way included within the original conveyance from WILLIAM SCULLY to the Chicago and Mississippi Railroad Company follows:
1. A private crossing, at grade, within Section 19, Garfield Township, Grundy County, Illinois, for the exclusive use of the Petitioners.
 2. A Public Crossing, at grade, at the intersection of said railroad right-of-way and Filman Road at the common boundary of Section 19 of Garfield Township and Section 24 of Goodfarm Township, Grundy County, Illinois.
 3. A Public Crossing, at grade, at the intersection of said railroad right-of-way and Stonewall Road at the common boundary of Sections 24 and 25 in Goodfarm Township, Grundy County, Illinois.
 4. A Public Crossing, at grade, at the intersection of said railroad right-of-way and Gantzert Road at the common boundary of Sections 25 and 26 in Goodfarm Township, Grundy County, Illinois.
 5. A Public Crossing, at grade, at the intersection of said railroad right-of-way and Scully Road at the common boundary of Sections 35 and 26 in Goodfarm Township, Grundy County, Illinois.
- F. The aforementioned crossings maintained by Union Pacific Railroad Company, as Successor to the Chicago and Mississippi Railroad Company, are generally at distances of greater than each quarter section, and therefore do not comply with the terms of the covenant within the September 2nd, 1853 Deed of Conveyance.
- G. The Union Pacific Railroad Company, and its predecessors, have in part fulfilled the terms and conditions of it's obligation to provide grade crossings pursuant to the Covenant in the September 2nd, 1853 Deed of Conveyance by providing and maintaining public crossings as aforementioned.

- H. The proposed closings of the public grade crossings at Filman Road and Gantzert Road would further enhance the failure of Union Pacific Railroad Company, as Successor to Chicago and Mississippi Railroad Company, to comply with the terms and conditions of the original conveyance, by failing to maintain grade crossings at the minimum separation as set forth in the September 2nd, 1853 Deed and Covenant reserved therein. Therefore, the failure of the Union Pacific Railroad, and its predecessors, to maintain grade crossings at intervals of not less than within each quarter section along the right-of-way within that portion of the right-of-way granted by the September 2nd, 1853 Deed of Conveyance from William Scully would be made greater if the proposed closings of the public grade crossings at Filman Road and Gantzert Road are Ordered.
- I. The closing of the public grade crossings at Filman Road and Gantzert Road would cause undue hardship to your Petitioner, and would, if not replaced by private crossings, be in violation of your Petitioners' rights under the aforementioned covenant reserved in the September 2nd, 1853 Deed of Conveyance.
- J. The proposed closing of the grade crossings at Gantzert Road and Filman Road, if Ordered, would constitute a taking of property of your Petitioners without payment of just compensation if any such Order would prohibit the Union Pacific Railroad Company from installing private grade crossings as required in the September 2nd, 1853 Deed of Conveyance.
- K. The failure of the Union Pacific Railroad Company, as the Successor to the Chicago and Mississippi Railroad Company, to comply with the terms and conditions of the covenant reserved as aforementioned, by failing to provide grade crossings as set forth in the September 2nd, 1853 Deed and Covenant contained therein, including any failure to replace any public grade crossings Ordered closed by this Commission with private grade crossings, would cause a forfeiture and a reversion to the Petitioners as Trustees of the Peter D. Scully Trust of 1954 of the said Union Pacific Railroad Company Right-of-Way which had been previously conveyed to Its Successor, the Chicago and Mississippi Railroad Company as now occupied by the Union Pacific Railroad Company.

WHEREFORE, YOUR PETITIONERS PRAY AS FOLLOWS:

Petition to Intervene:

That the Petitioners be allowed to intervene and be treated as a Party in the within proceedings for the following reasons:

- A. The failure to allow the intervention of the Petitioners in the within matter would be prejudicial to the Petitioners in that the Petitioners' interest and property rights have not previously been made known to this Commission, and if not fully protected may cause undue hardship to the Petitioners and would constitute a taking of property without just compensation.
- B. If the Union Pacific Railroad Company is found to be in violation of the covenants set forth in the September 2nd, 1853 Deed of Conveyance as mentioned herein, such a violation would be a violation of the **Covenant** contained in the September 2nd, 1853 Deed, and would cause a reversion to the PETER D. SCULLY Trust of 1954 of the property interests previously conveyed to the Chicago and Mississippi Railroad Company, and it's Successors, which would close the operations of said railroad, and cause considerable disruption to said railroad and to the Public Interest.
- C. That while the Petitioners' "Petition To Intervene" is pending, that the Petitioners be allowed to participate in the within proceedings.
- D. That the Petitioners be allowed to review the record of the within proceedings and to supplement said records as may be necessary to preserve the interest and rights of property of your Petitioners which may otherwise be affected by any ruling of this Commission.
- E. That your Petitioner be allowed to comment on Briefs or oral arguments and to file a Brief and to have oral argument with respect to the aforementioned closings.

Affirmative Relief Sought:

That the following affirmative relief, or alternate relief, be afforded your Petitioners as follows:

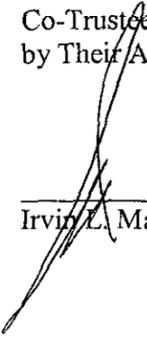
- A. That the proposed closings of the crossing at Filman Road, (TR 142A, DOT290530M) and Gantzert Road (TR 128B, DOT290532B), should not be Ordered.

- B. Alternatively, if the grade crossings at the aforementioned public roads are Ordered closed, that said Order specifically not prohibit the Union Pacific Railroad Company from installing private crossings at or about the same area as the public crossings which are sought to be closed hereunder, and further not prohibit the Union Pacific Railroad Company from installing such other grade crossings as necessary to comply with the September 2nd, 1853 Deed and Covenant therein.
- C. That the Union Pacific Railroad Company not be prohibited from installing, in coordination with these proceedings, such additional crossings as your Petitioners may request within the guidelines as reserved in the aforementioned September 2nd, 1853 Deed and the covenant reserved thereunder.
- D. That this Commission make no Finding nor enter any Order that would in any manner adversely affect your Petitioner's rights under the September 2nd, 1853 Deed and the Covenant thereunder, nor in any manner interfere with or prohibit the obligation of the Union Pacific Railroad Company, as Successor to the Chicago and Mississippi Railroad Company, to maintain the grade crossings as specified in the September 2nd, 1853 Deed and Covenant thereunder.
- E. In the event that this Commission would enter an Order closing the aforementioned public grade crossings and further prohibit the Union Pacific Railroad Company as Successor to Chicago and Mississippi Railroad Company from constructing private grade crossings in compliance with the September 2nd, 1853 Deed and Covenant thereunder, that the Union Pacific Railroad Company and/or the appropriate governmental authority having jurisdiction thereover be Ordered to pay just compensation to your Petitioners as **a taking of property** for which the payment **of just compensation** would be necessary.
- F. In the event that the grade crossings at Filman Road and Gantzert Road are Ordered closed, and further in the event that this Commission would enter an Order prohibiting the Union Pacific Railroad Company from constructing additional private grade crossings, and/or pay just compensation to your Petitioners, that the right-of-way previously conveyed pursuant to the September 2nd, 1853 Deed revert the PETER D. SCULLY TRUST of 1954, as the Successor to WILLIAM SCULLY.

- G. Until the issue of the Petitioners' rights hereunder have been considered, and/or until the issue of just compensation has been determined in the event that said crossings are closed and this Commission would order or cause the Union Pacific Railroad Company, as the Successor to the Chicago and Mississippi Railroad Company, not to otherwise fulfill the terms and conditions of the Covenant set forth in the September 2nd, 1853 Deed of Conveyance, that the grade crossings proposed to be closed at Filman Road and Gantzert Road remain open.
- H. That this Commission enter such further and other Orders as equity and justice may require to preserve and protect the interest of your Petitioners.

Respectfully Submitted by,

Peter D. Scully and Richard P. Scully,
Co-Trustees of the Peter D. Scully Trust of 1954
by Their Attorney,



Irvin L. Masching, Attorney at Law

This Document Prepared and Return To:

Irvin L. Masching, Attorney at Law
105 E. Chippewa Street
P.O. Box 247
Dwight, Illinois 60420
PH # (815) 584-1700
FAX # (815) 584-2900
SCULLY.petition

In Testimony Whereof the said party of the first part have hereunto set their hands and seals the day and year first above written

Signed sealed and delivered in the presence of
Leonard Aldrich (Seal)
Mary C. Aldrich (Seal)
Jury A. Armstrong

State of Illinois ss.
Gundy County ss. Be it Remembered that on this 4th day of October A. D. 1853 be me Leonard and Mary C. Aldrich came personally known to me to be the real persons whose names are subscribed to the foregoing deed as having executed the same and they acknowledged that they signed sealed and delivered said deed freely and voluntarily for the uses and purposes therein mentioned And the said Mary C. Aldrich being by me made acquainted with the contents and effect of said deed and by me examined separate and apart from her husband she acknowledged that she executed said deed and relinquished her right of dower in the premises therein described and set forth, freely and voluntarily and without the compulsion of her said husband

Given under my hand and seal at Morris in the County of Gundy and State of Illinois this 4th day of October in the year A.D. 1853
Jury A. Armstrong J.P. (Seal)

A true copy of the Original as filed for Record Oct 5th AD 1853

William Scully
Deed To
Ch M R.R. Company

This Indenture made this Second day of September in the year of our Lord one thousand eight hundred and fifty three Between William Scully and Margaret his wife of the County of Logan and State of Illinois of the first part And the Chicago and Mississippi Railroad Company of the second part Witnesseth that the said party of the first part for and in consideration of the covenants of the party of the second part hereinafter mentioned and the sum of one dollar to them paid by the said party of the second part the receipt whereof is hereby acknowledged have granted bargained sold released and conveyed and by these presents do grant bargain sell release and convey to the said party of the second part their successors and assigns forever all those certain pieces or parcels of Land Situate lying and being in the County of Gundy and State of Illinois and known designated and described as follows to wit a strip of land one hundred feet wide lying fifty feet on each side of the center line of the Chicago and Mississippi Rail Road as the same is now surveyed and located through or across the South West quarter of Section Number Eighteen (18) through all of Section Number Nineteen (19) in Township Number Thirty One (31) North of Range Eight (8) East through all of Section Number Twenty Four (24) also through the North half of the North West quarter of Section Number Twenty Seven (27)

156

also through all of section number twenty six (26) also through the North half of the North West quarter of section number thirty two (32) all in township number thirty one (31) north of range number seven (7) East of the third principal meridian conveying to said party of the second part fifty feet on each side of said central line the whole distance through or across all the foregoing described lands all of said lands lying and being situate in the County of Grundy and State of Illinois together with all the privileges and appurtenances to the said lands in anywise appertaining and belonging to have and to hold the above granted premises to the said party of the second part their successors and assigns to their use and behoof forever subject to the following covenants of the said party of the second part to wit the said party of the second part their successors and assigns shall in due season erect and maintain good and sufficient fences on each side of said strips of land hereby conveyed and also construct and maintain suitable and convenient crossings and cattle guards on each quarter section or smaller subdivisions if deemed necessary by the said party of the first part And the said party of the first part for himself doth covenant with the said party of the second part their successors and assigns that he is lawfully seized in fee of the aforesaid premises and that he will and his heirs executors and administrators shall warrant and defend the same to the said party of the second part their successors and assigns against the lawful demands of all persons

In Testimony whereof the said party of the first part have hereunto set their hands and seals the day and year first above written signed sealed and delivered in the

presence of William Scully
 The words "through" being interlined in five places on first page and the word "eight" written on an erasure and the words "successors and assigns" interlined in second page of this page before signing

Perry A. Armstrong
 State of Illinois) s) Be it Remembered That on this second day of Grundy County) s) Sept 2d 1853 before me an acting Justice of the Peace in and for said County and State came William Scully who is personally known to me to be the real person whose name is subscribed to the foregoing deed as having executed the same and acknowledged that he signed sealed and delivered said deed freely and voluntarily for the uses and purposes therein mentioned) And the said being by me made acquainted with the contents and effect of said deed and by me examined separate and apart from her husband she acknowledged that she executed said deed and relinquished her rights of dower in the premises therein described and set forth freely and voluntarily and without the compulsion of her said husband

Given under my hand and Seal at Morris in the County of Grundy and State of Illinois this second day of September in the year A.D. 1853
Perry A. Armstrong J.P.
 A true copy of the Original as filed for Record Oct 5th 1853

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission,)	
On Its Own Motion)	
)	
-vs-)	No. T01-0056
)	
Union Pacific Railroad Company; Goodfarm)	
Township located in Grundy County; and the)	
State of Illinois, Department of Transportation)	
Petition to Intervene in Citation to close)	
Filman Road (TR 142A, DOT290530M) and)	
Gantzert Road (TR 128B, DOT290532B))	
located in Goodfarm Twp., Grundy Co., Illinois)	

TO ALL PARTIES OF RECORD:

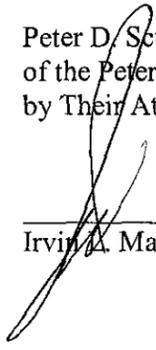
NOTICE OF FILING

Notice is hereby given that the attached Petition to Intervene has been filed in the above entitled matter before the Illinois Commerce Commission in Springfield Illinois at the offices of the Commission as follows: Donna Caton, Chief Clerk, Leland Building, 527 East Capitol Avenue, Springfield, Illinois 62701; and Kevin Sharpe, Director of Processing, 527 East Capitol Avenue, Springfield, Illinois 62701, by mailing the same to the Commission at the aforementioned addresses this 13th day of November, 2001 by placing the same in the United States mail at Dwight, Livingston County, Illinois at or about 04:30 p.m. on said date.

In addition, copies of the aforementioned Petition were mailed to those parties on the attached Service List attached hereto.

Dated this 13th day of November, 2001.

Peter D. Scully and Richard P. Scully, Co-Trustees
of the Peter D. Scully Trust of 1954
by Their Attorney,



Irvin A. Masching, Attorney at Law

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies and states that she placed a true copy of the above and foregoing instrument in an envelope clearly and plainly addressed to each of the persons stated on the attached service list, with sufficient first class postage affixed thereto, and deposited the same in the United States Mail at Dwight, Illinois at or about 4:30 P.M. this 13th day of November, 2001.



THIS DOCUMENT PREPARED AND RETURN TO:

Irvin L. Masching, Attorney at Law
105 E. Chippewa Street
P.O. Box 247
Dwight, Illinois 60420
PH # (815) 584-1700
FAX # (815) 584-2900

SCULLY.notice

SERVICE LIST FOR T01-0056

Craig Cassem
Grundy County Highway Engineer
310 East Dupont Road
Morris, Illinois 60450

Roland Gantzert
Clerk
Goodfarm Township
1910 E. Livingston Road
Dwight, Illinois 60420

Dave McKernan
Union Pacific Railroad Company
210 N. 13th St., Room 1612
St. Louis, MO 63103-2388

Document Processor
Union Pacific Railroad Company
C T Corporation System
208 S. LaSalle St.
Chicago, Illinois 60604

James Roeder
Highway Commissioner
Goodfarm Township
1840 W. Scully Road
Dwight, Illinois 60420

James Slifer
State of Illinois Department of Transportation
2300 S. Dirksen Parkway
Springfield, Illinois 62764

Donna Caton
Chief Clerk
Illinois Commerce Commission
Leland Building
527 East Capitol Avenue
Springfield, Illinois 62701

Kevin Sharpe
Director of Processing
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701